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10/816,194	04/02/2004	Tatsuya Aoyama	Q80870	7525

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EXAMINER
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LAM, HUNG H

ART UNIT	PAPER NUMBER
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2622

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/816,194

Applicant(s)

AOYAMA, TATSUYA

Examiner

Hung H. Lam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

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3. Claim(s) 9, 11 and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 9, 11 and 12 define an embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed a database or a program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 5-6 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Terashita (US-2002/0,140,825).

With regarding **claim 1**, Terashita discloses an image processing method comprising the steps of:

carrying out classification of models of digital cameras into groups of predetermined level ranges according to level of a characteristic of image data due to the models of the digital cameras that obtained the image data (abstract; 0008-0011):

carrying out setting of an image processing condition (Fig. 1; image processing means 4) for carrying out correction according to the level range of each of the groups (6 and 8; 0032-0035); and

carrying out the correction on image data obtained by a digital camera (image output means 5) belonging to any one of the groups by using the image processing condition set therefor (see image processing means 4 and image output means 5; 0035-0038 ).

With regarding **claim 2**, Terashita discloses the image processing wherein the characteristic includes a plurality of types and the classification, the setting (abstract; 0030), and the correction are carried out for each of the types of the characteristic (0031-0033).

With regarding **claim 5**, Terashita discloses an image processing apparatus comprising: storage means for storing:

models of digital cameras classified into groups of predetermined level ranges according to level of a characteristic of image data due to the models of the digital cameras that obtained the image data (abstract; 0008-0011);

the groups (0030); and

image processing conditions set for carrying out correction according to the level ranges of the respective groups while relating the models, the groups, and the image processing conditions to each other (0031-0033);

search means (selection means 6) for making judgment as to which of the groups a digital camera belongs to from the model of the digital camera that obtained image data to be corrected and for carrying out reading of the image processing condition set for the group that has been judged while referring to the storage means (0031; 0033; 0035: the selection means 6 inherently judges the groups of digital camera in order to select the optimum image processing conditions from the camera classification recording means 8); and

correction execution means for carrying out the correction on the image data obtained by the digital camera by using the image processing condition found by the search means (0031; 0035).

With regarding **claim 6**, Terashita discloses the image processing apparatus according to claim 5, the characteristic including a plurality of types, the storage means storing the models, the groups, and the image processing conditions in relation to each other for each of the types of the characteristic (0030; 0032; 0038-0040); and the search means (6) and the correction execution means (image processing means 4) carrying out the judgment, the reading, and the correction for each of the types of the characteristic (0033; 0035; 0041).

With regarding **claim 9**, Terashita discloses a database storing:

models of digital cameras classified into groups of predetermined level ranges according to level of a characteristic of image data due to the models of the digital cameras that obtained the image data the groups (abstract; 0008-0011); and

image processing conditions set (image processing means 4) for carrying out correction according to the level ranges of the respective groups while relating the models, the groups, and the image processing conditions to each other (0031-0035; 0041).

With regarding **claim 10**, Terashita discloses the database wherein the characteristic includes a plurality of types and the database stores the models, the groups and the image processing conditions in relation to each other for the respective types of the characteristic (0030; 0032; 0038-0040).

With regarding **claim 11**, Terashita discloses a program causing a computer to execute:

search processing (selection means 6) for making judgment as to which of the groups a digital camera that obtained image data to be corrected belongs to from the model of the digital camera and for carrying out reading of the image processing condition set for the group that has been judged while referring to the database in claim 9 (0031; 0033; 0035: the selection means 6 inherently judges the groups of digital

camera in order to select the optimum image processing conditions from the camera classification recording means 8); and

correction execution processing for carrying out the correction on the image data obtained by the digital camera by using the image processing condition found through the search processing (0031-0038; 0041).

With regarding **claim 12**, Terashita discloses a program causing a computer to execute:

search processing (selection means 6) for making judgment as to which of the groups a digital camera that obtained image data to be corrected belongs to for each of the types of the characteristic from the model of the digital camera and for carrying out reading of the image processing condition set for the group that has been judged while referring to the database in claim 10 (0031; 0033; 0035: the selection means 6 inherently judges the groups of digital camera in order to select the optimum image processing conditions from the camera classification recording means 8); and

correction execution processing for carrying out the correction on the image data obtained by the digital camera by using the image processing condition found through the search processing for each of the types (0031-0038; 0041).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terashita.

With regarding claim 3, Terashita fails to disclose the image processing method wherein the digital cameras are digital cameras built into mobile phones.

Official Notice is taken that it is well known and expected in the art to build cameras into mobile phones in order to consolidate many devices into one. Therefore, it would have been obvious to one of ordinary skill in the art to modify the device of Terashita by having digital cameras build into mobile phones. The modifications thus consolidate a camera and a mobile phone into one device and thus reducing carrying weight.

With regarding **claim 4**, the claim contains the same limitations as claimed in claim 3. Therefore, claim 4 is analyzed and rejected as previously discussed under claim 3.

With regarding **claim 7**, the claim contains the same limitations as claimed in claim 3. Therefore, claim 7 is analyzed and rejected as previously discussed under claim 3.

With regarding **claim 8**, the claim contains the same limitations as claimed in claim 3. Therefore, claim 8 is analyzed and rejected as previously discussed under claim 3.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Sato (US-2006/0,082,654) discloses a camera wherein captured images comprises start code, ID, user code, shooting date.

b) Kanehiro (US-2003/0,234,877) discloses a control system for image file.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung H. Lam whose telephone number is 571-272-7367. The examiner can normally be reached on Monday - Friday 8AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SRIVASTAVA VIVEK can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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